S.B. CIVIL WRIT PETITION NO.143/2003

Abdul Karim vs. Mst. Jaitun & others.

Date : 4.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. G.M. Khan, for the petitioner.

Mr. A.K. Rajvanshy, for private respondents.

Mr. Shyam Ladrecha, Addl.GA, for respondent State.

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Heard learned counsel for the parties.

Brief facts of the case are the property in dispute, an agriculture land, was said to be belonging to one Ibrahim. After the death of Ibrahim, by mutation no.1477 dated 25.8.1976, the name of Irbahim's brother Abdul Karim was entered. Ibrahim's wife Mst. Jaitun preferred an appeal to challenge the above mutation before the Court of S.D.O., Gangapur which was dismissed. Aggrieved by order of dismissal, second appeal was preferred before the Additional Divisional Commissioner, Ajmer who vide order dated 20.3.1991 partly accepted the appeal and set aside the order passed by S.D.O., Gangapur and Gram Panchayat and directed the Tehsildar, Gangapur to enter mutation in the name of the respondent therein to the tune of half share.

Against this order dated 20.3.1991, the appellant preferred revision before the Board of Revenue which was decided on 15.6.1995 and the order of Additional Divisional Commissioner for entering mutation in favour of the respondent to the tune of half share was set aside and the

remand order was maintained. The Tehsildar, after making necessary enquiry, passed an order on 19.2.1996 and allowed the mutation in favour of respondent Mst. Jaitun only.

Aggrieved by the order of Tehsildar dated 19.2.1996, Abdul Karim preferred an appeal before the Additional Divisional Commissioner which was dismissed on 20.1.1997. This dismissal order dated 20.1.1997 was challenged by filing second appeal before the Board of Revenue. The Board of Revenue, after considering the contention of the parties, observed that the mutation proceedings are fiscal proceedings and they do not confer right, title and interest in the property. The Board of Revenue further observed that if the appellant has got any right, title or interest in the disputed property, he is free to agitate before the competent court of law. However, the appeal was dismissed. Against this order of Board of Revenue dated 21.11.2002, the petitioner has filed this writ petition.

According to learned counsel for the petitioner, the matter was not considered in accordance with the law applicable to the parties to the proceedings as the parties are governed by Mohammedan Law and question of succession should have been decided in accordance with the provisions of Mohammedan Law. According to learned counsel for the petitioner, certain observations made in the mutation proceedings may prejudice the case of the petitioner, therefore, the petitioner is aggrieved against the order of Board of Revenue.

According to learned counsel for the petitioner, even

the mutation should not have been entered in the name of Mst. Jaitun and the courts below have committed serious illegality in ordering mutation in favour of Mst. Jaitun.

So far as the mutation proceedings are fiscal proceedings is concerned, there is not dispute by the petitioner.

The petitioner's grievance is that name of Mst. Jaitun should not have been recorded in revenue record as khatedar tenant for the land in dispute and though the petitioner has been given liberty to agitate his right, title or interest in the property in dispute by filing a suit in the competent court but the petitioner's case may be prejudiced because of the observations made in the orders passed by the authorities while dealing the mutation matter.

I have considered the rival submissions.

In view of the fact that no right, title or interest has been decided by any of the authorities below and merely order of mutation has been passed in favour of Mst. Jaitun and upheld upto the Board of Revenue, therefore, the petitioner cannot have any grievance in the facts of the case and complicated questions of succession etc. can be well decided in a properly filed suit.

In view of the above, I do not find any illegality in the order passed by the Board of Revenue. Accordingly this writ petition, having no merit, is hereby dismissed.

However, it is made clear that in case, the petitioner agitates his claim by filing suit before the competent court, the court may decide the suit strictly in accordance with law applicable to the parties to the proceedings and without being influenced by any observation made by the authorities referred above while dealing the mutation matter.

(PRAKASH TATIA), J.

S.Phophaliya